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Response to Election/Restriction Requirement (3 pages)

Application No. 10/644,402  
Filed: August 20, 2003

**FAX NUMBER: (717) 232-5300**

**PARALEGAL RESPONSIBLE:** Kimberly A. Newell **TELEPHONE:** (717) 237-5239

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PTO/SB/21 (02-04)

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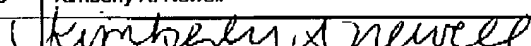
<b>TRANSMITTAL FORM</b> <i>(to be used for all correspondence after initial filing)</i>		Application Number	10/644,402
		Filing Date	August 20, 2003
		First Named Inventor	CHVERCHKO et al.
		Art Unit	3612
		Examiner Name	PATEL, KIRAN B.
Total Number of Pages in This Submission	6	Attorney Docket Number	21757-0002

ENCLOSURES (check all that apply)		
<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input checked="" type="checkbox"/> Amendment / Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____	<input type="checkbox"/> After Allowance Communication to Group <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): <p style="text-align: center;">Certificate of Fax Transmittal</p>
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## SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm or Individual name	McNees Wallace & Nurick LLC Kurt L. Ehresman
Signature	
Date	July 7, 2004

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Attorney Docket No. 21757-0002  
Serial No. 10/644,402

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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In re Application of: CHVERCHKO et al :

Serial No. 10/644,402 :

Group Art Unit: 3612

Application Filed: August 20, 2003 :

Examiner: Kiran B. Patel

For: HINGED TONNEAU COVER FOR TRANSPORTING A SIGNIFICANT TOP  
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RESPONSE TO ELECTION /RESTRICTION REQUIREMENT

Hon. Commissioner for Patents  
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Sir:

REMARKS

Claims 1-20 are pending in the present application. The Examiner has stated that, based upon the figures and his review thereof, there may be claims directed to as many as four patentably distinct species of the claimed invention (Species A – directed to figs 1-9 and 12; Species B – directed towards fig. 10; Species C – directed towards fig. 11; and Species D – directed towards fig. 13). The Examiner has further stated that “there appears to be no claim, which is generic to all species.” The Examiner has thus indicated that a single species be elected for prosecution on the merits.

Applicants hereby elect the invention of Species A, with traverse, and without prejudice. Applicants note that current claims 1-20 are directed to Species A, and elect those claims for further prosecution.

Having duly and fully responded to the restriction and election requirement, applicant now argues in traverse. Applicant wishes to express to the Examiner that the Examiner’s observation that “there appears to be no generic claim, which is generic to all species.” A simple reading of claim 1 reveals that it is the sole independent claim, and that it captures the genus of a

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cover comprised of at least two panels comprised of a thin rigid casing attached to a plurality of structural members. Claims 2-20 depend, directly or indirectly, from claim 1, adding limitations to describe species within the genus defined by claim 1. Thus, claims 1-20 are appropriate for prosecution as part and parcel of the submitted application for a single invention.

With respect to the Examiner's attempts to characterize Figure 10 as a separate species, Applicant directs the Examiner's attention to the specification at Para. 0045 which elaborates on Fig. 10. As stated in the specification and claimed in Claim 16, Fig. 10 represents a species within the genus of claim 1 wherein one panel includes an aperture or opening of sufficient size to accept a toolbox. Thus, Figure 10 (and corresponding claim 16) is a proper species and should not require restriction. In any event, the inclusion of Fig. 10 does not unreasonably expand the scope of the examiner's search and examination, and does not place any undue burden on the Examiner.

With respect to the Examiner's attempts to characterize Figure 11 as a separate species, Applicant directs the Examiner's attention to the specification at Para. 0046 which elaborates on Fig. 11. As stated in the specification and shown in Fig. 11, Fig. 11 represents a species within the genus of claim 1 wherein the cover includes three removably attached panels, and wherein one panel is removed. Indeed, Fig. 11 (as well as Figs. 1-9 and 12) is covered by claims 1-9. Thus, Figure 11 is a proper species and should not require restriction. In any event, the inclusion of Fig. 11 does not unreasonably expand the scope of the examiner's search and examination, and does not place any undue burden on the Examiner.

With respect to the Examiner's attempts to characterize Figure 13 as a separate species, Applicant directs the Examiner's attention to the specification at Para. 0048-0050 which elaborate on Fig. 13. As stated in the specification and shown in Fig. 13, Fig. 13 represents a species within the genus of claim 1 wherein the cover includes three removably attached panels, and wherein the cover further includes additional limiting features including an attached ladder rack and cab guard. These additional limiting features are claimed in claims 17-20, all of which depend, directly or indirectly, from generic claim 1. Thus, the species of Fig. 13 is a proper species and should not require restriction. In any event, the inclusion of the species of Fig. 13 does not unreasonably expand the scope of the examiner's search and examination, and does not place any undue burden on the Examiner.

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If prosecution of this application can be expedited by a telephone interview, the Examiner is encouraged to contact the Applicant's representative at the phone number listed below. The Applicant's representative apologizes for being unavailable when the Examiner attempted to request an oral election. The Commissioner is hereby authorized to charge indicated fees and credit any overpayments to Deposit Account No. 50-1059.

Respectfully submitted,



Kurt L. Ehresman  
Reg. No. 50,758  
McNees Wallace & Nurick  
100 Pine Street  
P.O. Box 1166  
Harrisburg, Pa 17108-1166  
Phone: 717-237-5458

Dated: July 7, 2004

PTO/SB/97 (06-03)

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Attorney Docket No.: 21757-0002

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